

1 GEORGE A. RILEY (State Bar No. 118304)
2 O'MELVENY & MYERS LLP
3 Two Embarcadero Center
4 28th Floor
5 San Francisco, California 94111-3828
6 Telephone: (415) 984-8700
7 Facsimile: (415) 984-8701
8 E-Mail: griley@omm.com

9 Attorneys for Defendant APPLE INC.

10 JAY W. EISENHOFER (*admitted pro hac vice*)
11 MICHAEL J. BARRY (*admitted pro hac vice*)
12 GRANT & EISENHOFER P.A.
13 Chase Manhattan Centre
14 1201 N. Market Street
15 Wilmington, Delaware 19801
16 Telephone: (302) 622-7000
17 Facsimile: (302) 622-7100
18 E-Mail: jeisenhofer@gelaw.com
19 mbarry@gelaw.com

20 Attorneys for Lead Plaintiff
21 THE NEW YORK CITY EMPLOYEES' RETIREMENT SYSTEM
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23 (Additional Counsel Listed on Signature Page)

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

IN RE APPLE INC. SECURITIES
LITIGATION

Case No. C06-05208-JF

CLASS ACTION

THIS DOCUMENT RELATES TO:
ALL ACTIONS

**JOINT SUBMISSION IN SUPPORT OF
AMENDED PRELIMINARY APPROVAL
ORDER**

Date: November 19, 2010
Time: 9:00 a.m.
Department: Ctrm. 3, 5th Floor
Judge: Honorable Jeremy Fogel

1 **I. INTRODUCTION**

2 The Settling Parties jointly request the Court enter the Amended Preliminary Approval
3 Order filed herewith. The Amended Preliminary Approval Order reflects the terms of the
4 Amended Stipulation and Agreement of Settlement entered into by the Settling Parties as of
5 November 12, 2010 (the “Stipulation”),¹ to (1) address an objection from a purported Class
6 Member regarding Apple’s proposed \$2.5 million donation to certain university corporate
7 governance programs, (2) provide for submission of Proofs of Claim online and by nominees and
8 make other non-substantive changes to the Proof of Claim to expedite processing of claims, and
9 (3) set forth a revised schedule for the Settlement.

10 The Court has set a hearing for November 19, 2010, at 9:00 a.m., to consider the
11 Amended Preliminary Approval Order. The Settling Parties believe, however, that the Court
12 adequately may consider the revised Stipulation on the papers submitted without the necessity of
13 a formal hearing. Nevertheless, the Settling Parties remain available at the Court’s convenience
14 in the event the Court determines it appropriate to proceed with a hearing on November 19.

15 **II. BACKGROUND**

16 On September 28, 2010, the Settling Parties entered into a Stipulation and Agreement of
17 Settlement (the “September 28 Stipulation”). Under the September 28 Stipulation, Apple agreed
18 to pay \$14 million in cash into a settlement fund, to implement certain corporate governance
19 measures, and to donate \$2.5 million to twelve corporate governance programs at universities
20 throughout the United States.² After a hearing on October 7, 2010, the Court entered the

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22 ¹ Except as defined below, all capitalized terms contained herein shall have the same meanings as
set forth in the Stipulation.

23 ² The twelve programs were : (1) Harvard Law School’s Program on Corporate Governance and
24 Financial Regulation; (2) University of Delaware’s Weinberg Center for Corporate Governance;
25 (3) Columbia Law School’s Center on Corporate Governance; (4) Northwestern University,
26 Kellogg School of Management’s Corporate Governance Program; (5) Stanford Law School &
27 the Graduate School of Business’s Rock Center for Corporate Governance; (6) Baruch College
28 City University of New York’s Robert Zicklin Center for Corporate Integrity; (7) University of
Texas, Dallas’s School of Management Institute for Excellence in Corporate Governance; (8)
Vanderbilt University Law School’s Law & Business Program; (9) Kennesaw State University
College of Business’s Corporate Governance Center; (10) Yale School of Management’s
Millstein Center for Corporate Governance & Performance; (11) San Diego State University
Corporate Governance Institute; and (12) Indiana University, Kelly School of Business’s Institute
for Corporate Governance.

1 Preliminary Approval Order and scheduled a final hearing for January 7, 2011.

2 On October 21, 2010, the Settling Parties received a written objection from Theodore H.
3 Frank of the Center for Class Action Fairness on behalf of a purported Class Member. Mr.
4 Frank's objection is the only objection received by the Settling Parties to date. Mr. Frank
5 asserted that Apple's proposed donations may violate Circuit precedent regarding *cy pres*
6 distributions. He also expressed concern about Plaintiffs' Lead Counsel's affiliation with two
7 programs designated to receive pro rata donations under the Settlement: the Harvard Law
8 School's Program on Corporate Governance and Financial Regulation ("HLS Program") and the
9 University of Delaware's Weinberg Center for Corporate Governance ("Weinberg Center"). As
10 disclosed in the papers filed with this Court in support of the Settlement, Mr. Eisenhofer serves in
11 an uncompensated capacity on the boards of advisors for the HLS Program and the Weinberg
12 Center. (Lead Plaintiff's Notice of Motion and Unopposed Motion for Preliminary Approval of
13 Class Action Settlement (Docket #116) at 6 n.5.)

14 The Settling Parties reviewed Mr. Frank's objection and found it to be without merit. Mr.
15 Eisenhofer's affiliation was disclosed in Lead Plaintiff's submission in support of preliminary
16 approval. The selection of the twelve programs had nothing to do with any existing affiliations
17 with the parties or their counsel, and the proposed \$2.5 million donation complied in all respects
18 with applicable law.

19 Nevertheless, after significant discussion, the Settling Parties agreed to amend the
20 Settlement in order to address Mr. Frank's objection and thereby expedite final approval of the
21 Settlement and the distribution of the benefits to the Class. Accordingly, on November 12, 2010,
22 the Settling Parties entered into the Stipulation, a copy of which is attached as **Exhibit 1**. Mr.
23 Frank was advised of these amendments to the Settlement. The Stipulation restructures Apple's
24 payment obligations under the Settlement so that, instead of paying \$14 million into the
25 Settlement Fund and donating \$2.5 million to the twelve programs, Apple will pay \$16.5 million
26 into the Settlement Fund. The Stipulation provides that any funds remaining in the Net
27 Settlement Fund after payment of Class Members' claims will be donated to nine corporate
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governance programs, which were among the twelve designated in the September 28 Stipulation.³ The Settling Parties specifically excluded (i) the HLS Program and the Weinberg Center because, as previously disclosed, Mr. Eisenhofer serves in an uncompensated capacity on the boards of advisors for those two programs, and (ii) Columbia Law School's Center on Corporate Governance because an Apple director currently serves on the Board of Trustees for Columbia University. After due inquiry, the Settling Parties do not believe that they or their counsel have affiliations with the nine programs designated in the amended Settlement.

The Settling Parties also conferred about certain suggestions raised by the Claims Administrator to streamline the submission and processing of Proofs of Claim. As a result, the Settling Parties agreed to revise the Notice, Publication Notice, and Proof of Claim to provide for submission of Proofs of Claim online and by nominees and to make other non-substantive changes to the Proof of Claim. The terms of the Settlement remain unchanged in all other material respects from what the Court preliminarily approved on October 7, 2010.

III. ARGUMENT

The Court preliminarily approved the settlement under the terms of the September 28 Stipulation. (Preliminary Approval Order ¶ 2.) As amended, the Settlement provides an additional \$2.5 million, or a total of \$16.5 million, in monetary benefits to the Class. In addition, nine corporate governance programs will receive donations if any funds remain in the Net Settlement Fund after payment of Class Members' claims. These programs support corporate governance education and thus, will provide additional non-monetary benefits to the Class. Furthermore, the proposed revisions to the Notice, Publication Notice, and Proof of Claim will streamline the claims process by providing for submission of Proofs of Claim online and by nominees and more accurate claim information. The Settling Parties believe that the Settlement is

³ The nine programs are: (1) Northwestern University, Kellogg School of Management's Corporate Governance Program; (2) Stanford Law School & the Graduate School of Business's Rock Center for Corporate Governance; (3) Baruch College City University of New York's Robert Zicklin Center for Corporate Integrity; (4) University of Texas, Dallas's School of Management Institute for Excellence in Corporate Governance; (5) Vanderbilt University Law School's Law & Business Program; (6) Kennesaw State University College of Business's Corporate Governance Center; (7) Yale School of Management's Millstein Center for Corporate Governance & Performance; (8) San Diego State University Corporate Governance Institute; and (9) Indiana University, Kelly School of Business's Institute for Corporate Governance.

fair, reasonable and adequate and the proposed notice program satisfies the requirements of Federal Rule of Civil Procedure 23(e), the PSLRA, and due process.

The Settling Parties propose the following revised schedule for the Settlement:

	PRELIMINARY APPROVAL ORDER	AMENDED PRELIMINARY APPROVAL ORDER⁴
Last day to commence mailing of Notice and Proof of Claim to Class Members	10/26/10	11/30/10
Last day to publish Publication Notice in <i>Investor's Business Daily</i> and transmit over <i>Business Wire</i>	10/29/10	11/30/10
Last day to file motions and papers in support of the final approval of the Settlement, the Plan of Allocation, and Lead Plaintiff's Application for Attorneys' Fees and Expenses	12/2/10	1/7/11
Last day to submit requests for exclusion from the Class and objections to the Settlement, the Plan of Allocation, and Lead Plaintiff's Application for Attorneys' Fees and Expenses	12/16/10	1/21/11
Last day to file reply papers in support of final approval of the Settlement, the Plan of Allocation, and Lead Plaintiff's Application for Attorneys' Fees and Expenses, and responses to any objections	12/23/10	2/4/11
Settlement Fairness Hearing	1/7/11 (Friday)	2/18/11 (Friday)
Last day to submit Proof of Claim	1/31/11	3/15/11

⁴ The revised deadlines for mailing the Notice and Proof of Claim and publishing the Publication Notice assume that the proposed Amended Preliminary Approval Order is entered on November 12, 2010.

1 **IV. CONCLUSION**

2 For the foregoing reasons, the Settling Parties respectfully request that the Court enter the
3 proposed Amended Preliminary Approval Order, a copy of which is attached as **Exhibit 2**.

4 Dated: November 12, 2010

GEORGE A. RILEY
O'MELVENY & MYERS LLP

6 By: /s/ George A. Riley

7 George A. Riley

8 Attorneys for Defendant
APPLE INC.

9 Dated: November 12, 2010

DOUGLAS R. YOUNG (S.B. #73248)
FARELLA BRAUN & MARTEL LLP
Russ Building
235 Montgomery Street, 17th floor
San Francisco, CA 94104
Telephone: (415) 954-4400
Facsimile: (415) 954-4480
E-Mail: dyoung@fbm.com

14 By: /s/ Douglas R. Young

15 Douglas R. Young

16 Attorneys for Defendants
STEVEN P. JOBS, WILLIAM V.
17 CAMPBELL, MILLARD S. DREXLER,
ARTHUR D. LEVINSON and JEROME B.
18 YORK

19 Dated: November 12, 2010

JEROME C. ROTH (S.B. #159483)
YOHANCE C. EDWARDS (S.B. #237244)
MUNGER, TOLLES & OLSON LLP
560 Mission Street, 27th Floor
San Francisco, California 94105
Telephone: (415) 512-4000
Facsimile: (415) 512-4077
E-Mail: Jerome.Roth@mto.com
Yohance.Edwards@mto.com

24 By: /s/ Yohance C. Edwards

25 Yohance C. Edwards

26 Attorneys for Defendants
FRED D. ANDERSON and NANCY R.
27 HEINEN
28

1 Dated: November 12, 2010

JAY W. EISENHOFER (*admitted pro hac vice*)
MICHAEL J. BARRY (*admitted pro hac vice*)
GRANT & EISENHOFER P.A.
Chase Manhattan Centre
1201 N. Market Street
Wilmington, Delaware 19801
Telephone: (302) 622-7000
Facsimile: (302) 622-7100
E-Mail: jeisenhofer@gelaw.com
mbarry@gelaw.com

7 By: /s/ Michael J. Barry

8 Michael J. Barry

9 MERRILL GLEN EMERICK (SB# 117248)
ANDERLINI & EMERICK LLP
411 Borel Avenue, Suite 501
San Mateo, California 94402
Telephone: (650) 242-4884
Facsimile: (650) 212-0081

12 Attorneys for Lead Plaintiff
13 THE NEW YORK CITY EMPLOYEES'
14 RETIREMENT SYSTEM

15 PATRICE L. BISHOP (S.B. #182256)
HOWARD T. LONGMAN
STULL, STULL & BRODY
10940 Wilshire Boulevard, Suite 2300
Los Angeles, California 90024
Telephone: (310) 209-2468
Facsimile: (310) 209-2087
Email: pbishop@ssbla.com

19 GARY S. GRAIFMAN
KANTROWITZ, GOLDHAMER &
20 GRAIFMAN
747 Chestnut Ridge Road
Chestnut Ridge, New York 10977
Telephone: (845) 356-2570
Facsimile: (845) 356-4335

23 Attorneys for Plaintiffs
24 MARTIN VOGEL and KENNETH
MAHONEY

1 I, George A. Riley, am the ECF User whose ID and password are being used to file this
2 Joint Submission in Support of Amended Preliminary Approval Order. In compliance with
3 General Order 45, X.B., I hereby attest that Douglas R. Young, Yohance C. Edwards, and
4 Michael J. Barry have concurred in this filing.

5 By: /s/ George A. Riley
6 George A. Riley
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